



FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CG Docket Nos. 03-123, 10-51, 12-38; FCC 22-49; FR ID 114537]

TRS Fund Contributions

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Federal Communications Commission (Commission) modifies the cost recovery rules for funding two forms of Internet-based telecommunications relay services (TRS)—video relay service (VRS) and Internet Protocol Relay Service (IP Relay). The Commission expands the Interstate TRS Fund (TRS Fund or Fund) contribution base for support of those services to include intrastate as well as interstate end-user revenues of TRS Fund contributors. This action will ensure fair treatment of intrastate and interstate communications services and users in the funding of relay services.

DATES: *Effective date:* This rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

Compliance date: July 1, 2023.

FOR FURTHER INFORMATION CONTACT: Michael Scott, Disability Rights Office, Consumer & Governmental Affairs Bureau, at (202) 418-1264 or Michael.Scott@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Report and Order, document FCC 22-49, adopted June 26, 2022, released June 30, 2022, in CG Docket Nos. 03-123, 10-51, and 12-38. The Commission previously sought comment on these issues in *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, Structure and Practices of the Video Relay Service Program, Misuse of Internet Protocol (IP) Relay Service*, Notice of Proposed Rulemaking (NPRM), CG Docket Nos. 03-123, 10-51, and 12-38, FCC 20-161, published at 86 FR 14859, March 19, 2021. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio

format), send an email to fcc504@fcc.gov, or call the Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice).

SYNOPSIS:

1. *Background.* Section 225 of the Communications Act of 1934, as amended (the Act), requires the Commission to ensure that both “interstate and intrastate” TRS are available “to the extent possible and in the most efficient manner.” 47 U.S.C. 225(b)(1). The Act directs the Commission to adopt, administer, and enforce regulations governing the provision of interstate and intrastate TRS, including rules on cost separation, which “shall generally provide” that interstate TRS costs are recovered from all subscribers for every interstate service and intrastate TRS costs are recovered from the intrastate jurisdiction. The Act also authorizes, but does not require, the establishment of state-administered TRS programs, subject to approval by the Commission. Currently, all 50 states, the District of Columbia, and several United States territories have TRS programs approved by the Commission. For ease of reference, The Commission refers to all state and territory TRS programs as state TRS programs. The Commission requires that state TRS programs include text-based TRS and speech-to-speech relay (STS).

2. To provide for the recovery of interstate TRS costs, the Commission established the interstate TRS Fund in 1993. Telecommunications carriers, as well as providers of interconnected and non-interconnected voice-over-Internet-Protocol (VoIP) service, are required to contribute to the TRS Fund, on a quarterly basis, a specified percentage of their end-user revenues for the prior year. Providers of international as well as interstate services are currently required to contribute to the TRS Fund. For ease of reference, the Commission uses the term “interstate” to mean “interstate and international.”

3. Although initially limited to supporting interstate TRS, the scope of the TRS Fund changed beginning in 2000, as the Commission authorized Internet-based forms of TRS—VRS, IP Relay, and Internet Protocol Captioned Telephone Service (IP CTS). VRS is a form of TRS that enables people with hearing or speech disabilities who use sign language to make telephone calls over broadband with a videophone. IP Relay is a form of TRS that permits an

individual with a hearing or a speech disability to communicate in text using an Internet Protocol-enabled device via the Internet. IP CTS is a form of TRS that permits an individual who can speak but who has difficulty hearing over the telephone to use a telephone and an Internet Protocol-enabled device via the Internet to simultaneously listen to the other party and read captions of what the other party is saying.

4. When the Commission first authorized use of Internet-based forms of TRS, it decided, as an interim measure to speed the development of these services, that all of the costs of providing Internet-based TRS should be paid by contributors to the TRS Fund, based only on their interstate end-user revenues. This approach was deemed preferable to burdening state relay programs with the responsibility to fund and supervise, on a state-by-state basis, the provision of intrastate relay services via these nascent technologies. In those proceedings, the Commission did not consider the alternative, adopted here, of expanding the TRS Fund contribution base to include intrastate end-user revenues. However, the Commission stated an intention to revisit these interim funding arrangements in the future.

5. In 2019, the Commission revisited the funding arrangement for one form of Internet-based TRS, IP CTS. Recognizing that the “interim” funding mechanism for IP CTS disproportionately burdens providers and users of interstate services, the Commission concluded it was no longer justifiable. Therefore, the Commission amended its rules to expand the TRS Fund contribution base for that service to include intrastate as well as interstate end-user revenues. TRS Fund Contributions, Document FCC 19-118, published at 85 FR 462, January 6, 2020 (*IP CTS Contributions Order*).

6. *Discussion.* The Commission amends its rules to provide that TRS Fund contributions for the support of VRS and IP Relay shall be calculated based on the total interstate and intrastate end-user revenues of each telecommunications carrier and VoIP service provider. The Commission thereby replaces “interim” funding measures adopted nearly two decades ago. The record supports the Commission’s conclusion that the rules it adopts will provide a fair allocation of TRS Fund contribution obligations among those entities subject to its TRS funding authority. The total contributions needed to support the TRS Fund will not be affected, but the

Commission anticipates that (assuming there is no unrelated change in the TRS Fund budget for supporting these services) TRS Fund contributions paid as a percentage of interstate end-user revenues for the support of VRS and IP Relay will decline by approximately 55%.

7. The Commission adopts this rule change for the reasons set forth in the *NPRM*. *First*, the current funding arrangements for VRS and IP Relay were authorized some 20 years ago as interim measures to speed the development of these services, and that purpose has been achieved. VRS is the second largest TRS program, and IP Relay's annual minutes exceed the annual TRS Fund-supported minutes of all state TRS programs combined.

8. *Second*, the Commission's action corrects the inherent inequity of the current funding arrangements. VRS and IP Relay, which cumulatively require close to \$540 million in TRS Fund backing, are supported entirely from interstate end-user telecommunications and VoIP revenues, with 0% contribution from intrastate revenues. By contrast, approximately 76% of the costs of relay services provided through state TRS programs are funded from intrastate sources, and, since the Commission's 2019 IP CTS funding reforms were implemented, approximately 55% of IP CTS costs are funded from intrastate end-user revenues. The Commission notes that contributions to support IP CTS are divided between interstate and intrastate sources in the same percentages as the reported end-user revenue. According to the 2021 USF Monitoring Report, approximately 55% of total end-user telecommunications and interconnected VoIP revenues are intrastate, and 45% are interstate. Although the contribution base for TRS includes *non-interconnected* VoIP end-user revenues, while the USF contribution base does not, the inclusion of this relatively small category is unlikely to have a major impact on the Commission's estimate of the relative percentages of intrastate and interstate end-user revenues in the TRS contribution base.

9. As a result, the burden of supporting VRS and IP Relay has widely disparate impacts on TRS Fund contributors, based solely on the extent of interstate usage of their services. For TRS Fund Year 2022-23, for example, the administrator has recommended a contribution factor of 0.01125, meaning that a provider of interstate-only services must contribute approximately 1.11% of its total annual end-user revenues to support VRS and IP Relay. By

contrast, the average TRS Fund contributor pays only 0.50% of its total annual end-user revenues to support those services. And providers of intrastate-only services contribute nothing, despite the availability of VRS and IP Relay for intrastate as well as interstate calling.

10. *Third*, recovering VRS and IP Relay costs based on total end-user revenues reduces the likelihood of distortions in the pricing of interstate and intrastate voice services due to inaccurate market signals regarding their relative costs. As the Commission has recognized in various contexts, applying artificial regulatory distinctions or other disparate treatment to providers of similar services may create unintended market distortions, which can reduce the effectiveness of competition in ensuring efficient pricing of telecommunications services.

11. *Fourth*, the total amount of end-user revenues from which TRS Fund contributions can be drawn has been steadily decreasing over time, worsening the impact of the current funding arrangement on interstate service providers and users and increasing any resulting distortions in the pricing of intrastate and interstate service. Expanding contributions to support VRS and IP Relay to encompass intrastate as well as interstate revenues may strengthen the sustainability of these services.

12. *Fifth*, no state TRS program offers VRS or IP Relay, and there continue to be impediments to any state successfully administering and funding intrastate VRS and IP Relay. Accordingly, the Commission has no reason to believe that encouraging or mandating state program support of VRS and IP Relay would be a practical alternative. The Commission notes that its action today does not preclude any state from seeking certification to provide VRS or IP Relay, but given the lack of indication in the record that any state agency intends to do so, the Commission need not address at this time what changes in funding arrangements could be appropriate in the event of such a change in state policies.

13. *Finally*, no party has identified any differences between VRS and IP Relay, on the one hand, and IP CTS, on the other, that would support maintaining different funding arrangements for these services.

14. *Legal Authority*. The Commission finds that it has statutory authority to include

the intrastate end-user revenues of telecommunications carriers and VoIP service providers in the calculation of TRS Fund contributions to support VRS and IP Relay. Section 225 of the Act expressly directs the Commission to ensure that both interstate and intrastate TRS are available and grants the Commission broad authority to establish regulations governing both interstate and intrastate TRS, including TRS cost recovery. Further, the Act affords the Commission, without limitation, “the same authority, power, and functions with respect to common carriers engaged in intrastate communication as the Commission has in administering and enforcing the provisions of this [Act] with respect to any common carrier engaged in interstate communication.” 47 U.S.C. 225(b)(2). In addition, section 715 of the Act requires that VoIP service providers “participate in and contribute to the Telecommunications Relay Services Fund . . . in a manner prescribed by the Commission . . . consistent with and comparable to the obligations of other contributors to such Fund.” 47 U.S.C. 616. The Commission also notes that Congress expressly carved out section 225 of the Act from the Act’s general reservation of state authority over intrastate communications, and that responsibility for administering TRS is shared with the states only to the extent that a state applies for and receives Commission approval to exercise such authority. The Commission concludes that, where a form of TRS is not offered in state TRS programs, the Commission may adopt reasonable measures to ensure equitably distributed contributions from all interstate and intrastate service providers subject to the Commission’s authority under sections 225 and 715 of the Act.

15. To collect TRS Fund contributions for VRS and IP Relay from intrastate and interstate end-user revenues, the administrator will follow the same procedure currently used for IP CTS, except that a single contribution factor will be used to determine the total level of support required for all three services. The interstate-only contribution factor will continue to be used, but only to support the interstate costs of services provided in state TRS programs (currently TTY-based TRS, STS, and non-Internet-based CTS). The TRS Fund administrator will determine a revenue requirement for the three services, based on the applicable compensation formulas and projected demand for each service. Next, the TRS Fund administrator will compute a TRS Fund contribution factor for the three services, by dividing the revenue requirement by the

total intrastate and interstate end-user revenues reported by TRS Fund contributors on Forms 499-A.

16. This approach is simple and feasible to administer, requires only minor modification of our rules, and distributes the funding obligation among TRS Fund contributors in a reasonably equitable manner, with each contributor paying the same percentage of its total interstate and intrastate end-user revenues for support of Internet-based TRS. Further, this approach does not require jurisdictional separation of TRS costs. As under the current funding mechanism for VRS and IP Relay, no cost separation is needed because all costs of the service will be supported by the TRS Fund, and the amounts paid by each Fund contributor are unaffected by the proportion of TRS costs that might be deemed interstate or intrastate. Accordingly, the Commission finds it unnecessary to refer this matter to a Federal-State Joint Board.

17. *Economic Impact.* The Commission adopts its tentative conclusion that the benefits of more efficient production and consumption exceed the costs of the proposed rule change. Broadening the TRS funding base will tend to reduce any current distortions in the relative prices of intrastate and interstate telecommunications and VoIP services, increasing economic efficiency by more accurately signaling relative costs to purchasers, which in turn will generate more efficient provider investment signals.

18. Further, this transfer results in no net increase in contributions for TRS Fund contributors as a whole. Expanding the TRS Fund contribution base for VRS and IP Relay to include intrastate revenues will reduce the TRS funding contributions paid by providers of interstate telecommunications and VoIP services and concomitantly increase the contributions paid by providers of intrastate services. To the extent this would occur, it is not a cost of the Commission's rule change, but a transfer of the contribution burden from some providers and their customers to other providers and their customers. As an example, based on the administrator's recommended budget for TRS Fund Year 2022-23, approximately 55% of TRS Fund expenditures on VRS and IP Relay in 2022-23, or \$297 million—which under the existing rules would be collected from contributors' interstate end-user revenues—will be collected from

intrastate end-user revenues instead. This represents a \$297 million transfer in the incidence of TRS Fund contributions from the interstate to the intrastate jurisdiction, but the total funding requirement is unaffected. In addition, the record does not indicate that any transitional costs of this transfer, which the Commission mitigates by extending the implementation timeline, as discussed further below, could be so substantial as to outweigh the long-lasting efficiency benefits described above.

19. The Commission is cognizant that this change will have disparate impacts on carriers and service providers, as each provider's contribution may be adjusted up or down depending on the percentage of their end-user revenues that is classified as intrastate. NTCA – The Rural Broadband Association suggests that such changes may have “inequitable” effects on some rural service providers and customers, pointing out that the analogous change in IP CTS funding adopted in 2019 led to significant increases in contribution obligations for rural providers. However, NTCA does not dispute that such changes are necessary to correct more pervasive, longstanding inequities in TRS funding, or that those service providers who now face increased costs—as a result of our action to equalize each contributor's percentage contribution from total end-user revenues—have derived offsetting benefits over the preceding two decades, by paying a much *lower than average* share of their total end-user revenues to support TRS. While the Commission is mindful of the increased contribution cost that some entities must bear, it does not consider such increases inequitable. Therefore, the Commission denies NTCA's request to adjust the contribution formula for rural service providers to limit their required contributions from intrastate end-user revenues. The Commission also notes that NTCA has not provided specific evidence that any provider would be unable to recover such increased costs. Further, given that the cost of TRS Fund support for VRS and IP Relay is approximately 25% lower than for IP CTS, the Commission expects the net effect on any provider's total TRS Fund contribution to be less burdensome than the impact of the analogous rule change adopted in 2019 with regard to IP CTS funding.

20. The Commission does not address NTCA's request for unspecified changes in access charge cost recovery rules, which is outside the scope of this proceeding and, in any event,

does not provide a specific description of either the perceived problem or a proposed solution. After the Commission adopted a cap on all switched access rate elements in 2011, the Wireline Competition Bureau clarified, pursuant to its delegated authority, how incumbent local exchange carriers may recover increases in TRS Fund contribution costs and waived applicable rules to facilitate such cost recovery. To the extent that any service provider believes the access charge rules unreasonably hinder its recovery of TRS Fund contribution costs, the Commission notes that specific concerns may be brought to the Commission's or Wireline Competition Bureau's attention for further clarification, waiver, or other action consistent with the 2011 order (76 FR 65965, October 25, 2011) and the Commission's rules.

21. *Compliance Deadline.* Telecommunications carriers and VoIP service providers shall be required to contribute a percentage of intrastate as well as interstate end-user revenues to fund VRS and IP Relay beginning July 1, 2023. Based on the record, the Commission finds good cause to establish a more extended compliance timeline than the seven months allowed in the *IP CTS Contribution Order*. The Commission is persuaded by commenters that a transition period of substantially less than one year could subject some TRS Fund contributors to undue economic stress. A longer period will allow additional time for carriers and providers facing changes in required contributions to adjust budgets, proposals, billing and compliance systems, and other planning processes. Setting a compliance date of July 1, 2023, will afford contributors close to one year from the effective date of this final rule to prepare for compliance. In addition, it is administratively efficient to tie the compliance date to the start of a new TRS Fund year. As an additional administrative benefit, a July 1 compliance date aligns with the filing date for incumbent local exchange carriers' annual tariffs. Although IDT Corporation (IDT) argues that administrative efficiency should not be the Commission's primary concern, the Commission's decision takes account of other factors in addition to administrative efficiency. To avoid unnecessarily complicating the TRS Fund contribution process and the cost recovery adjustments that must be made by affected contributors, the Commission finds it appropriate to align the implementation of this change with the beginning of TRS Fund Year 2023-24 on July 1, 2023.

Final Regulatory Flexibility Analysis

22. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission incorporated an Initial Regulatory Flexibility Analysis (IRFA) into the *NPRM* and sought written public comment on the proposals in that document, including comment on the IRFA.

23. *Need For, and Objectives of, the Rules.* The Commission modifies the cost recovery rules for VRS and IP Relay to provide a fair and reasonable allocation of the funding burden for TRS. Specifically, providers of intrastate as well as interstate telecommunications and VoIP services must contribute to the TRS Fund for the support of VRS and IP Relay, based on a percentage of their total annual end-user revenues from intrastate, interstate, and international services. Requiring that contributions to support VRS and IP Relay include contributions from intrastate end-user revenues removes contribution asymmetry and ensures intrastate revenue is available to support intrastate VRS and IP Relay. This action addresses the interim cost recovery rules for VRS and IP Relay and better aligns the cost recovery rules with the terms of section 225 of the Act. *See* 47 U.S.C. 225. It also both reduces the inequitable burden on providers of interstate telecommunications and VoIP services and strengthens the funding base for these critical services.

24. *Summary of Significant Issues Raised by Public Comments in Response to the IRFA.* No comments were filed in response to the IRFA.

25. *Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration.* The Chief Counsel for Advocacy of the Small Business Administration did not file any comments in response to the proposed rules in this proceeding.

26. *Small Entities to which the Rules will Apply.* The rules adopted in the *Report and Order* will affect the following types of small entities: wired telecommunications carriers; interexchange carriers; local resellers; toll resellers; other toll carriers; wireless telecommunications carriers (except satellite); satellite telecommunications service providers; and providers of all other telecommunications.

27. *Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements.* The rules adopted in the *Report and Order* do not impose new or additional reporting, recordkeeping, or other compliance requirements on small entities.

28. *Steps Taken To Minimize Significant Impact on Small Entities, and Significant Alternatives Considered.* Expanding the TRS Fund contribution base for VRS and IP Relay to include intrastate end-user revenues will cause a corresponding reduction in the contributions required from interstate and international end-user revenues. As a result, while small entities with mostly intrastate revenue will be required to make increased payments to the TRS Fund, other small entities with mostly interstate revenue will experience a reduction in TRS Fund contributions. This change will not increase the total contributions required. The additional costs incurred by some small entities are justified by the benefits of appropriately allocating the funding of the provision of VRS and IP Relay among all telecommunications carriers and VoIP providers.

29. The Commission considered whether to revise the contribution formula or the cost recovery mechanisms available to small rural carriers and providers as suggested by NTCA. The Commission determined that the record did not contain sufficient evidence to justify such changes. The Commission left open the ability for an adversely affected carrier or provider to petition the Commission for waiver with specific evidence showing that current rules inhibited said carrier or provider from fully recovering contribution costs. The Commission also modified the proposed compliance deadline in response to comments filed in the proceeding to provide affected entities close to one year to comply with the modified contribution obligations. This should allow small entities sufficient time to adjust budgets, proposals, billing and compliance systems, and other planning processes for meeting their funding obligations.

30. *Federal Rules Which Duplicate, Overlap, or Conflict With, the Commission's Proposals.* None.

Ordering Clauses

31. Pursuant to sections 1, 2, 225, and 715 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 225, 616, the *Report and Order* is adopted, and part 64 of title 47

is amended.

Congressional Review Act

32. The Commission sent a copy of the *Report and Order* to Congress and the Government Accountability Office pursuant to the Congressional Review Act, 5 U.S.C. 801(a)(1)(A).

Final Paperwork Reduction Act of 1995 Analysis

33. The *Report and Order* does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995. In addition, therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002.

List of Subjects in 47 CFR Part 64

Communications, Communications common carriers, Individuals with disabilities, Telecommunications.
Federal Communications Commission.

Marlene Dortch,
Secretary, Office of the Secretary.

Final Regulations

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 64 as follows:

PART 64 - MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

1. The authority citation for part 64 continues to read as follows:

Authority: 47 U.S.C. 151, 152, 154, 201, 202, 217, 218, 220, 222, 225, 226, 227, 227b, 228, 251(a), 251(e), 254(k), 255, 262, 276, 403(b)(2)(B), (c), 616, 620, 716, 1401-1473, unless otherwise noted; Pub. L. 115-141, Div. P, sec. 503, 132 Stat. 348, 1091.

2. Amend § 64.604 by revising paragraphs (c)(5)(ii) and (c)(5)(iii)(A) to read as follows:

§ 64.604 Mandatory minimum standards.

* * * * *

(c) * * *

(5) * * *

(ii) *Cost recovery.* Costs caused by interstate TRS shall be recovered from all subscribers for every interstate service, utilizing a shared-funding cost recovery mechanism. Except as noted in this paragraph (c)(5)(ii), costs caused by intrastate TRS shall be recovered from the intrastate jurisdiction. In a state that has a certified program under § 64.606, the state agency providing TRS shall, through the state's regulatory agency, permit a common carrier to recover costs incurred in providing TRS by a method consistent with the requirements of this section. Costs caused by the provision of interstate and intrastate IP CTS, and (beginning July 1, 2023) for VRS and IP Relay, if not provided through a certified state program under § 64.606, shall be recovered from all subscribers for every interstate and intrastate service, using a shared-funding cost recovery mechanism.

(iii) * * *

(A) *Contributions.* (1) Every carrier providing interstate or intrastate telecommunications services (including interconnected VoIP service providers pursuant to § 64.601(b)) and every provider of non-interconnected VoIP service shall contribute to the TRS Fund, as described in this paragraph (c)(5)(iii)(A):

(i) For the support of TRS other than IP CTS, VRS, and IP Relay, on the basis of interstate end-user revenues; and

(ii) For the support of IP CTS, and (beginning July 1, 2023) for VRS and IP Relay, on the basis of interstate and intrastate end-user revenues.

(2) Contributions shall be made by all carriers who provide interstate or intrastate services, including, but not limited to, cellular telephone and paging, mobile radio, operator services, personal communications service (PCS), access (including subscriber line charges), alternative access and special access, packet-switched, WATS, 800, 900, message telephone service (MTS), private line, telex, telegraph, video, satellite, intraLATA, international, and resale services.

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[FR Doc. 2022-25294 Filed: 11/23/2022 8:45 am; Publication Date: 11/25/2022]